

STATE OF NORTH CAROLINA

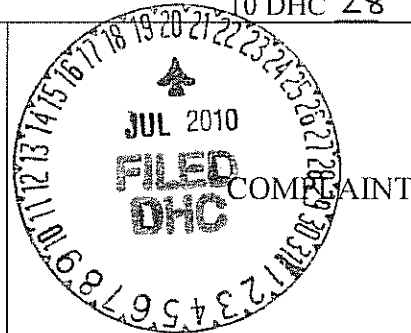
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
10 DHC 28

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

KELTON T. BROWN, Attorney,  
Defendant



Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Kelton T. Brown (hereafter "Defendant" or "Brown"), was admitted to the North Carolina State Bar on 24 March 2001 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina. Brown's license to practice law in North Carolina was active from the date of his admission until 2 December 2004, when he was administratively suspended. Brown's license was reinstated on 27 July 2005 and remained active until 9 September 2008, when it was again administratively suspended. Brown's law license remains administratively suspended as of the date of the filing of this complaint.

3. During all or part of the relevant periods referred to herein, Brown was engaged in the practice of law in the State of North Carolina and maintained law offices in Raleigh and/or Knightdale, Wake County, North Carolina.

#### FIRST CLAIM FOR RELIEF

4. Brown represented Brenda and Jamel Winstead (collectively "the Winsteds") in personal injury cases related to an accident that occurred on 15 May 2006.

5. On or about 20 December 2006, Brown received a total of \$13,300.00 in settlement proceeds for the Winsteds. Brown deposited the Winsteds' settlement proceeds into his attorney trust account.

6. According to disbursement summaries signed by the Winsteads and provided by Brown to the State Bar, Brown was authorized to disburse the \$13,300.00 as follows:

- (a) \$7,684.83 to the Winsteads;
- (b) \$3,400.00 to an individual named R. Holden on behalf of the Winsteads;
- (c) \$2,195.43 to Brown Law Group for fees and costs; and
- (d) \$19.74 to an entity called Nash Medical Records.

7. Brown deposited the Winsteads' funds on 20 December 2006, and the balance in his attorney trust account was reduced to zero by 5 April 2007.

8. None of the checks written from Brown's trust account during the period from 20 December 2006 through 5 April 2007 was payable to Brenda Winstead, Jamel Winstead, R. Holden, or Nash Medical Records.

9. None of the checks or other withdrawals from Brown's trust account during the period from 20 December 2006 through 5 April 2007 has a notation indicating it was drawn on the Winsteads' client balance.

10. None of the checks or other withdrawals from Brown's trust account during the period from 20 December 2006 through 5 April 2007 corresponds to any amount Brown was authorized to disburse on behalf of the Winsteads.

11. Brown represented to the State Bar that he actually disbursed the \$13,300.00 he received for the benefit of the Winsteads as follows:

- (a) \$4,389.00 payable to Brown Law Group and deposited into Brown's operating account on 12/21/06;
- (b) \$4,000.00 as a counter withdrawal;
- (c) \$2,376.00 payable to Brown and deposited into Brown's operating account on 2/1/07; and
- (d) \$2,535.00 that remained in Brown's trust account and was used for the benefit of other clients.

12. The Winsteads did not authorize Brown to use \$2,535.00 of their funds for the benefit of Brown's other clients.

13. By way of the two deposits dated 21 December 2006 and 1 February 2007, Brown transferred \$6,765.00 of the Winsteads' entrusted funds into his operating account.

14. Brown's operating account was overdrawn by 27 February 2007.

15. During the period from 21 December 2006 through 27 February 2007, Brown used the funds in his operating account to pay for personal expenses.

16. Brown did not maintain client ledgers accounting for his receipt and disbursement of entrusted funds for the Winsteads, nor did he provide either of the Winsteads with a written accounting of his receipt and disbursement of entrusted funds upon the complete disbursement of those funds.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By depositing funds held in trust for the Winsteads into his operating account and using those funds for personal expenses, Brown failed to identify, hold, and maintain entrusted property separate from his own property in violation of 1.15-2(a), used entrusted funds for his own benefit and/or the benefit of a third party in violation of Rule 1.15-2(j), committed a criminal act reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: embezzlement—in violation of Rule 8.4(b), and engaged in conduct involving dishonesty in violation of Rule 8.4(c);
- (b) By using a portion of the Winsteads' entrusted funds for the benefit of other clients, Brown used entrusted funds for his own benefit and/or the benefit of a third party in violation of Rule 1.15-2(j), committed a criminal act reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: embezzlement—in violation of Rule 8.4(b), and engaged in conduct involving dishonesty in violation of Rule 8.4(c); and
- (c) By failing to maintain client ledgers or render final accountings to the Winsteads, Brown failed to maintain a record of receipts and disbursements for each person from whom and for whom funds were received in violation of Rule 1.15-3(b) and failed to provide written accountings of the receipts and disbursements of all trust funds upon the complete disbursement of the funds in violation of 1.15-3(e).

#### SECOND CLAIM FOR RELIEF

17. Paragraphs 1 through 16 are re-alleged and fully incorporated as if set forth herein.

18. On 23 October 2008, the Chair of the North Carolina State Bar Grievance Committee issued a Subpoena for Cause Audit ("SCA") commanding Brown to produce to the State Bar all attorney trust account records he was required to maintain pursuant to Rule 1.15-3 of the Rules of Professional Conduct. Brown was served with the SCA on 27 October 2008.

19. Brown met with State Bar investigators on 27 October 2008. The investigators explained to Brown what he was required to produce pursuant to the SCA.

20. Brown did not produce complete bank account records as commanded by the SCA, so State Bar investigators obtained some records from Brown's bank in an effort to complete the audit.

21. State Bar investigators made repeated attempts throughout 2009 to obtain from Brown sufficient information to complete the audit. Brown did not provide the documentation he was required to produce pursuant to the SCA, nor did he provide the specific information and documentation requested by the investigators.

22. Brown never provided the State Bar with sufficient information and documentation to complete the audit of his trust account.

23. The limited records Brown did produce to the State Bar revealed the following:

- (a) Brown routinely made counter withdrawals from his trust account. In these transactions, funds were withdrawn either as cash or in the form of a certified check. Brown maintained neither copies of certified checks nor receipts reflecting his distribution of cash. For almost all of these counter withdrawals, Brown's records reflected neither the recipient of funds disbursed from his trust account nor the client balance upon which those funds were drawn.
- (b) Brown frequently wrote checks payable to himself that did not reflect the client balance upon which the checks were drawn.
- (c) Brown failed to perform monthly or quarterly reconciliations of his attorney trust account.
- (d) Brown failed to maintain client ledgers, reconciliations, and other required documentation of his receipt and disbursement of entrusted funds.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) & (3) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By engaging in the conduct described in paragraph 23 above, Brown drew items on the trust account, payable to himself, which did not indicate the client balance on which the item was drawn in violation of 1.15-2(h), made cash withdrawals from his trust account in violation of 1.15-2 (i), failed to perform or maintain trust account reconciliations in violation of 1.15-3(d), and failed to maintain the minimum required records for attorney trust accounts in violation of 1.15-3(b) & 1.15-3(g); and
- (b) By failing to provide information, documentation, and trust account records as required by the SCA and as repeatedly requested by the State Bar, Brown failed to produce trust account records for inspection and

copying upon request by the State Bar in violation of Rule 1.15-3(h) and knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(a) and N.C.G.S. § 84-28(b)(3).

### THIRD CLAIM FOR RELIEF

24. Paragraphs 1 through 23 are re-alleged and fully incorporated as if set forth herein.

25. On 9 September 2008, Brown's license to practice law was administratively suspended for failure to comply with the State Bar's Continuing Legal Education (CLE) requirements and for failure to pay membership dues. His license remained administratively suspended through the filing date of this complaint.

26. In February 2009, Brown appeared in Guilford County District Court on behalf of Terry Law, who was charged with possession of marijuana and drug paraphernalia.

27. Also in February 2009, Brown appeared in Wake County District Court on behalf of Ricky J. Floyd, who was charged with drug trafficking. Brown entered a plea of guilty on behalf of Floyd, but sentencing was continued to a later date.

28. Throughout 2009, Brown continued to communicate with the Wake County Assistant District Attorney (ADA) assigned to Floyd's case. Brown did not reveal to the ADA or to the Wake County court that his law license was suspended.

29. On motion of the ADA, Floyd's plea was set aside because Brown had not been licensed to practice law at the time the plea was entered.

30. On 23 April 2009, Brown entered a notice of appearance on behalf of Jeremy A. Smith (AKA Jeremy Colebrook) (hereinafter "Smith") in a criminal case in the United States District Court for the Eastern District of North Carolina.

31. On 4 May 2009, Brown appeared in federal court on behalf of Smith and entered a guilty plea.

32. When it came to the federal court's attention that Brown had not been licensed to practice law at the time of Smith's plea, the plea was set aside.

33. While his law license was suspended, Brown held himself out as able to represent clients and solicited fees for legal representation from one or more inmates at Sampson Correctional Institution.

34. On multiple occasions in the spring of 2009, Brown falsely represented to Department of Corrections (DOC) officials that he was a licensed attorney and was representing inmates in the custody of DOC.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

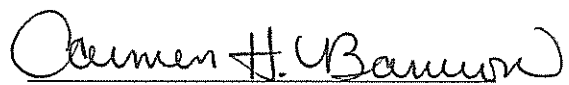
- (a) By continuing to practice law while his license was suspended, Brown engaged in the unauthorized practice of law in violation of Rule 5.5(a);
- (b) By falsely holding himself out as a licensed attorney while he was suspended and by soliciting fees from potential clients when he was not licensed to practice law, Brown engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c); and
- (c) By entering pleas on behalf of Smith and Floyd that were later set aside because Brown was not licensed to practice law at the time of the pleas, Brown engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

WHEREFORE, Plaintiff prays that

- 1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
- 2. Defendant be taxed with the fees and costs permitted by law in connection with this proceeding; and
- 3. For such other and further relief as the Hearing Panel deems appropriate.

This the 20<sup>th</sup> day of July, 2010.

  
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Ronald G. Baker, Chair  
Grievance Committee

  
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Carmen Hoyme Bannon, Deputy Counsel  
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*Attorney for Plaintiff*  
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